

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 - - - - -x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS INC.

8

9 Debtors.

10

11 - - - - -x

12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, New York 10004-1408

16

17 September 17, 2015

18 10:04 A.M.

19

20 B E F O R E:

21 HON. SHELLEY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECRO: MATTHEW

1 HEARING re #47569: Status Conference regarding the RMBS
2 Protocol

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcribed by: Theresa Pullan

1 A P P E A R A N C E S :

2

3 CHAPMAN AND CUTLER LLP

4 Attorneys for US National Bank, As Trustee

5 111 West Monroe Street

6 Chicago, Illinois 60603-4080

7 Houston, TX 77002-2755

8 BY: FRANKLIN H. TOP, III, ESQ.

9

10 WILLKIE FARR & GALLAGHER LLP

11 Attorneys for Debtor

12 787 Seventh Avenue

13 New York, NY 10019

14 BY: TODD G. COSENZA, ESQ.

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE CLERK: How is everyone today. Please have a seat. All right. Mr. Cosenza?

MR. COSENZA: May I approach?

THE COURT: Yes. It seems like we were just together.

MR. COSENZA: Yes. Just another update, Your Honor.

THE COURT: Okay.

MR. COSENZA: May it please the Court, Todd Cosenza from Willkie Farr and Gallagher for Lehman Brothers Holdings Inc.

Your Honor, I'm going to be brief, but I just want to give you just a brief overview of where we are, give you sort of Lehman Brother's general observations on where we are next, next steps, give you an overview from the trustees, their process, give you an overview of what Lehman Brothers is doing in terms of reviewing files and rebuttal.

THE COURT: Okay.

MR. COSENZA: Some of the issues that we're seeing and some of the problems we're seeing with some of the claims that are being presented to us and then where we're going next basically --

THE COURT: That sounds good, and then of course folks will have a chance to give their perspective.

MR. COSENZA: So, Your Honor, the plan administrator

1 has completed its initial review of the RMBS trustee's claims
2 on the first 50,000 loan files. I think I have four general
3 observations and then we'll get into more detail.

4 As we discussed at the hearing in December, it's
5 clear to us from looking at the files that each claim file
6 presented is unique, it has unique challenges, unique factual
7 issues. Each file has to be reviewed in context based on the
8 underwriter, the lender and the borrower. Basically each,
9 every loan has an individualized story and that has made our
10 review process somewhat time consuming by the protocols working
11 in that regard, and that is something that we expected remember
12 when we had the hearing back in December.

13 Two, the second general observation, the RMBS
14 trustees have taken a very broad view of what documentation is
15 sufficient to establish a claim. In many instances this broad
16 view encompasses --

17 THE COURT: Broad view meaning fewer documents.

18 MR. COSENZA: Yeah, anything that could facially seem
19 to be a claim, just throw it over to us for us to sort of rebut
20 and have to, you know, make an assessment and rebut the claim.
21 This is --

22 THE COURT: Could you describe that in a little more
23 detail?

24 MR. COSENZA: Sure.

25 THE COURT: When you say a broad view, I'm reading

1 that to mean skinny documentation.

2 MR. COSENZA: Yes.

3 THE COURT: But then the next thing that you said
4 didn't seem consistent with that. So give me an example.

5 MR. COSENZA: Yeah, it's almost, I can give you
6 several examples. I mean one example is there certain claims
7 that have been put forward to us as obvious breaches of reps
8 and warranties by borrower. When we provide over to the
9 trustees the underwriting guidelines that the loan was written
10 under, the loan actually comports with the underwriting
11 guidelines, so we have to go through this process of them
12 sending it over to us, us looking at it, saying well it
13 actually comports with the underwriting guidelines, and then
14 sort of putting that to the side. So step three is actually
15 going to have more files than we had initially anticipated.

16 THE COURT: Does the protocol contemplate that in
17 response to your hitting it back, so to speak, that they are
18 then obligated to say you're right or does that go off into
19 another bucket?

20 MR. COSENZA: So we now move on to step three, and
21 this is, we're going to have sort of a rubber is going to meet
22 the road in some sense. We're going to have a meet and confer
23 business to business discussion. They have what their claim
24 was, we have our basis for our rebuttal. And I think a number
25 of these claims that they put forward are going to fall to the

1 side during that process. We hope, that's sort of our
2 expectation based on what we've seen and sort of what we're
3 putting back to them.

4 If that does not work, there's then step four of the
5 protocol which is the claims facilitation process where both
6 sides will have, you know, in essence a mediation process
7 before a claims facilitator where it decides if it's really a
8 viable claim, but there are some issues with that, there's
9 going to be a discussion as to whether or not that moves on to
10 step five and to Your Honor.

11 THE COURT: Right.

12 MR. COSENZA: But in terms of the documentation, just
13 some other issues that we've seen, just so I can highlight some
14 of them for you.

15 Another example is, there have been claims put
16 forward based on misrepresentations of income.

17 THE COURT: Right.

18 MR. COSENZA: And then to support that claim, the
19 trustees will put forward a W-2 or tax return for a year or two
20 after the loan was originated and that doesn't, that's an
21 example of something where they haven't put forward you know
22 sufficient evidence for us to show the breach occurred at the
23 time of origination.

24 There are a number of other examples where there are
25 typographical errors in the appraisal reports, they have put

1 those forward to us, they're really not material errors in the
2 appraisal's report. And we expect and we have a meeting,
3 process with them, some of those claims are going to fall by
4 the side.

5 Another example is a number of claims were, they have
6 claims of misrepresentation from the borrower, that this is a
7 primary residence when in fact it was a second home. And it's
8 clear when you actually look at the entire underwriting file
9 for some of those that it was disclosed to the originator that
10 these were in fact second homes so there's really no breach of
11 misrepresentation by the borrower.

12 But I guess the overall point, Your Honor is there is
13 a lot of stuff being thrown to us on this first step that we
14 thought we could whittle down by the trustees, we had to go
15 through a more painstaking process and go through a lot more,
16 you know, some more files than we expected. But --

17 THE COURT: Can you characterize, I'd be surprised if
18 you can but I'll ask anyway, can you characterize a percentage
19 of you know what you've described? You know, like this
20 reflects what we see with respect to 50 percent, 10 percent?
21 Do you have a ballpark sense of how many?

22 MR. COSENZA: I'll confer with my co-counsel but I
23 would say here --

24 THE COURT: It's more than anecdotal.

25 MR. COSENZA: Yeah.

1 THE COURT: But it's not pervasive.

2 MR. COSENZA: It may be somewhat pervasive, it could
3 be over 30 percent of the claims being put to us, if not
4 higher. So it's an issue, and we're hoping in step three that
5 there's obviously going to be a much more reasonable approach
6 put forward by the trustees when they hear our rebuttals and
7 understand the claims that really are, really don't have any
8 merits and we don't have to waste time on step four or step
9 five. That's why I mentioned before step three is really an
10 important part of this process.

11 But there is a downside to this and that it is
12 there's a lot more expense that we're incurring on step two to
13 go through.

14 THE COURT: You know, I need to hear from the
15 trustees first, but my observation would be that taking what
16 you say as accurate then it ought to be the case that on a go
17 forward basis the process is adjusted so that those same things
18 do not continue to happen either because the protocol that's
19 been set up internally, I'm looking at the trustee's counsel,
20 either because the protocol that's been set up internally for
21 the review before the claims come over to you needs to be
22 tweaked or because individual reviewers or groups of reviewers
23 are not correctly implementing the protocols that are in place.
24 I'd rather believe that the instructions are correct and this
25 is kind of human error than systematically folks are being

1 told, you know, just shovel the stuff across. So --

2 MR. COSENZA: Well we hope, sorry, we hope when we do
3 --

4 THE COURT: I mean I presume, I always presume good
5 faith and I'd like to believe that's the case.

6 MR. COSENZA: And I hope that after we go through the
7 initial round in step three from some of these files that there
8 will be sort of a re-jiggering of the system in terms of the
9 files that are being put forward to us because there are, I
10 think we are, we do see some systemic issue with some of the
11 claims being put forward.

12 THE COURT: So when is the, when is that step three
13 meeting, or series of meetings supposed to occur?

14 MR. COSENZA: I think they're supposed to come, I
15 mean, within the next 60 days.

16 UNIDENTIFIED: I think it's discretionary.

17 THE COURT: Right. But so that's my point. So you
18 know there's a run rate I'm imagining in terms of the number of
19 files that get reviewed a day. So if you don't have that
20 meeting that among other things will speak to systemic issues
21 for 60 days, that's a whole heck of a lot of files that then
22 are run through the mill under hypothetically, you know,
23 inaccurate guidelines. So it would seem to me that you ought
24 to do that sooner rather than later or that we ought to kind of
25 insert into a lineup some kind of a meet and confer that would

1 help obviate more of the same happening. And again, these
2 folks might stand up and tell me that you're completely wrong,
3 or marginally wrong.

4 MR. COSENZA: One other part of this. There are
5 weekly meet and confers between not the lawyers but basically
6 between Duff & Phelps and the Lehman team sort of go through
7 sort of big picture issues, so there are efforts that I think
8 are going to be much more detailed over the next month or two
9 to try to whittle these down.

10 THE COURT: So that's good. Okay.

11 MR. COSENZA: Third point, Your Honor, general point
12 and observation, the trustees are presenting claims on
13 virtually all nonperforming loans with a value of at least
14 \$1,000, so we have a very low monetary threshold for the claims
15 that are being put forward to us. Again, this is not
16 surprising, but we were hoping to sort of get to the more
17 substantive claims, you know, getting a lot more volume that's
18 causing the trust to go through, or the estate to go through a
19 lot more in terms of expenses.

20 And fourth, Your Honor, I think is the point, you
21 know, the biggest point, due to the types of claims that are
22 being put forward to us, we believe we have received a
23 voluminous number of unwarranted claims. And the plan
24 administrator can't justifiably accept those claims, and those
25 claims are going to have to go through step three, step four

1 and step five of this process. And we have years of experience
2 pursuing downstream claims and the types of evidence that we
3 need to substantiate those claims. So we have guidance from
4 the Court on how those claims are supposed to be pursued and
5 what evidence is needed to establish a downstream claim. So
6 we're keeping that in mind in terms of as we're going through
7 this process and that's important to us.

8 So we have a very high rebuttal rate, Your Honor,
9 about 97 percent of the claims being put forward to us. Again,
10 it's not totally surprising, but it's a little bit dismaying in
11 terms of the volume of claims that are being put forward to us.

12 So in terms of next steps, I think I've highlighted
13 this for you in terms of step three, I detailed this before.
14 We're going to have this business to business meet and confer
15 process on some of these claims. Again, if there's not a
16 resolution to a bunch of those claims in step three, we then
17 move the claims facilitation process, just in essence, to
18 mediation. So there's still quite some time before we appear
19 before you for claims, and we're very hopeful and optimistic
20 that once people meet face to face on an individual claim
21 there's more realistic assessment of what the claim is worth
22 and the issues, and evidentiary issues in terms of some of the
23 claims that have been forwarded to us.

24 THE COURT: Okay. And remind me -- two questions
25 that you may not be prepared for but I'll ask them anyway --

1 remind me what the situation is with respect to the reserves
2 for these claims.

3 MR. COSENZA: The reserves for these claims remain at
4 --

5 THE COURT: How much are, is still being reserved for
6 these claims?

7 MR. COSENZA: \$5 billion.

8 THE COURT: Five billion. Okay. And the other
9 question, are you aware of any developments in the CNBS, RNBS
10 litigation landscape generally that affect your view of the go
11 forward, this go forward litigation, anything that you believe
12 that I ought to be aware of if you, again, I'm not, I don't
13 want to put you on the spot, but I see a lot of headlines
14 regarding RNBS, CNBS and most of them appear to be completely
15 unrelated to what we're doing here, but I'd certainly like to,
16 would like to be able to keep up with what's going on.

17 MR. COSENZA: We will, we do intend on doing that.
18 There have been a couple of decisions recently in the Southern
19 District that are difficult to understand fully even when you
20 read the opinion, not because you know Judge Coe (phonetic) is
21 a great Judge, there's a lot of information that's been
22 provided to the Court in terms of expert reports, underlying
23 documents that are hard to parse through.

24 THE COURT: Very lengthy opinion.

25 MR. COSENZA: Yeah, that are very --

1 THE COURT: Even longer than mine.

2 MR. COSENZA: Yes. That are hard to parse through
3 without fully seeing what the countered positions were and how
4 the underlying documents worked. So we're in the process of
5 trying to figure some of those issues out. But we do intend to
6 bring, if there's something we think is a meaningful shift in
7 the landscape or something you should be aware of, we will
8 debrief you on that, but that's, there's one decision in
9 August, late August from Judge Coe that we are looking at right
10 now. But again, we're not in a position to get it to you
11 because we're trying to fully assess it.

12 THE COURT: Fair enough. Okay.

13 MR. COSENZA: Your Honor, a few other things as I
14 mentioned earlier. The trustees have put forward their, how
15 they're going to do their review process and I wanted to give
16 you some color very briefly as to what Lehman is doing in terms
17 of going through the loans on rebuttal.

18 We've taken a two prong approach to review claims
19 brought by the trustees. This approach is meant to ensure a
20 comprehensive and accurate view of the claims as well as
21 documentation and evidence that the claims have been
22 [indiscernible]. First, the loans that are presented by the
23 trustees are [indiscernible] by Recufco (phonetic) which as you
24 will recall in December is Mr. Keon's (phonetic) firm, so
25 they're doing comprehensive due diligence, re-underwriting the

1 files. And this analysis provides an initial recommendation as
2 to how we should view the file in terms of how it was
3 underwritten.

4 Second, the plans administrator counsel, Mr. Rollin
5 (phonetic) who is sitting at the table, his team performs a
6 legal review of the claims, looking at Recufco's
7 recommendations of how the claims should be treated. This
8 review focuses on the evidence presented by the trustees to
9 support their claims. The purpose of that review is to verify
10 whether there is sufficient documentary basis to justify the
11 claims on a loan by loan basis and to make sure obviously as
12 the plan administrator wants to make sure that the claims that
13 we do agree with they're justifiable claims before the money is
14 basically earmarked to go out the door. So our process is look
15 at each loan and related claim very carefully to determine in
16 each individualized case whether there is a loss that is
17 justifiably compensable.

18 Your Honor, I provided some examples of some of the
19 types of loans we've seen. I just want to highlight a couple
20 of them for you in addition to the one I mentioned earlier. I
21 mentioned to you the W-2 issue, number of files where the
22 income that is misrepresented, what they've provided to us as
23 income from a subsequent time period not from when the loan was
24 issued. Clearly that's you know pretty significant from our
25 perspective because [indiscernible] misrepresentation has to

1 take place at the time of loan. Again, that number of
2 typographical errors that they have thrown up to us in the
3 appraisal documents doesn't impact the substance of the
4 appraisal, some technical issues with the appraisal, they put
5 those forward and we don't think those are bad appraisals
6 because the substantive data in the underlying appraisal is
7 accurate.

8 Again, the issue I raised before about whether or not
9 there's a misrepresentation as to whether or not this is a
10 primary residence or a secondary residence. We have a number
11 of files that we've seen where we actually do a comprehensive
12 review of what the underwriters looked at and it's clear that
13 this was for a second home, not for a primary residence.
14 Again, we expect, we are hoping and we expect in step three all
15 those files will just fall right to the side.

16 THE COURT: And you also mentioned files that are
17 only in the thousand dollar range.

18 MR. COSENZA: Yes.

19 THE COURT: Can you characterize how many?

20 MR. COSENZA: I can ask Mr. Roe if you can just give
21 me one minute. Yeah, we don't know the number, Your Honor. So
22 I can speed things along, Your Honor, I don't have that number,
23 I can get it to you.

24 THE COURT: That's fine. I'm just trying to, you
25 know, gauge and --

1 MR. COSENZA: But each of these number of claims,
2 each sort of you know a few hundred here, a couple hundred
3 here, a thousand here, 4,000 here, the number of claims, this
4 could help speed things along in step three and step four.

5 So I guess in summary, Your Honor, the important
6 points I wanted to raise to you; one, the protocol is working
7 to some degree. We have gotten more claims than we expected
8 and some of the quality of the claims are lower than we had
9 expected and hoped, so we're incurring some additional
10 expenses.

11 THE COURT: So that's the one thing that I didn't ask
12 you in terms of how many claims you've gotten versus how many
13 files they've reviewed. I think when we were last together I
14 recall a 50 percent number.

15 MR. COSENZA: Yes.

16 THE COURT: So is that still --

17 MR. COSENZA: I think that remains generally
18 consistent and yeah, it's about right, I don't have --

19 THE COURT: So 50 percent are coming over, and you're
20 saying basically 97 percent of those 50 percent are going back
21 across in rebuttal.

22 MR. COSENZA: That's sort of correct, but there's one
23 carve out on that. There are a number of files where they sent
24 to us out of the 50 percent that are missing documentation that
25 even we, you know, they agree and we agree that we can't really

1 begin the review process, so there's some chunk of those files
2 that haven't even gone into the reject or the accept bin
3 because they've just been sitting and they're making efforts to
4 try to get the documentation.

5 So I think the protocol is where it is. We're hoping
6 that these move more quickly in step three and step four. We
7 do think it may take more time than we anticipated in step
8 three because of the number of files that we're getting
9 through. But again, we're moving diligently and trying to move
10 forward with the protocols as fast as we can. Thank you, Your
11 Honor.

12 THE COURT: Good morning, how are you?

13 MR. TOP: Good morning, Your Honor, Frank Top from
14 Chapman and Cutler.

15 THE COURT: How are you, Mr. Top?

16 MR. TOP: On behalf of U.S. Bank National
17 Association. I'm doing well.

18 THE COURT: Am I going to hear from --

19 MR. TOP: I'm also here with Bill Monroe (phonetic).

20 THE COURT: Sure. Am I going to hear from all of you
21 or are you speaking for the group?

22 MR. TOP: I'm speaking for the group.

23 THE COURT: Okay. I mean I'd be happy to hear from
24 each of you.

25 MR. TOP: So anyway --

1 THE COURT: The glass is half empty, half full it
2 sounds like.

3 MR. TOP: You know, obviously we have a hard big task
4 in front of us. You know, we've already reviewed 86,000 loans
5 as of the end of August, we're continuing to review 17,000 per
6 month, and we've met every milestone we're expected to meet in
7 terms of the protocol so far.

8 THE COURT: Okay.

9 MR. TOP: We have not submitted claims of the 86,000,
10 we have not submitted claims with respect to over 46,000 so
11 we're a little bit over the 50 percent.

12 THE COURT: Okay.

13 MR. TOP: And as it relates to how we're going about
14 reviewing the loans, we are in fact prioritizing the loans for
15 purposes of review. Obviously, I would be surprised if there
16 is a lot of thousand dollar loans in there because frankly if
17 we're getting 40 cents on the dollar, it's not worth our while
18 to review those loans. Right?

19 THE COURT: Exactly, it's totally not. Right.

20 MR. TOP: We have as a group of trustees have come up
21 with a method of prioritizing loans based upon damage amounts,
22 so you know to the extent that there are a couple of loans in
23 there that might be of a \$1000 value, I would be surprised, but
24 you know if that's the case, that's the case.

25 THE COURT: Sure. But based on, and I'm not going to

1 give you a suggestion as to where the line would be drawn,
2 certainly \$1,000 seems like it's not worth pursuing, but there
3 ought to be a mechanism to prevent those from going into the
4 cue in the first instance.

5 MR. TOP: And we're doing that. It had cost us \$600
6 to review it. Right? So we're not going to review a loan for
7 600 bucks when we're going to [indiscernible].

8 THE COURT: Right. Okay. So I mean I think the
9 takeaway from that is that you'll double-check that would allow
10 claims that small amount to even get into the cue. So I don't
11 think we have to pause on that for long.

12 MR. TOP: Yes. So that's absolutely right. We have
13 submitted 39,000 claims now for in the amount of \$9 billion.

14 THE COURT: How much?

15 MR. TOP: 9 billion.

16 THE COURT: 9 billion?

17 MR. TOP: Yeah.

18 THE COURT: 9 million or billion?

19 MR. TOP: Billion. 39,000 claims, \$9 billion, some
20 of those are active loans and, you know, we have to sit down
21 and talk to the debtors about how we're going to really value
22 active loans, so there's a part of that 9 billion that
23 constitutes active loans and we just asserted them for the full
24 purchase price, but obviously we realize we're going to have to
25 discuss those.

1 THE COURT: Let me take you back up. 86,000 out of
2 how many total?

3 MR. TOP: Well so the total number of loans that are
4 in the covered loan steer are 213,000.

5 THE COURT: Right.

6 MR. TOP: That would include loans --

7 THE COURT: But my recollection was that that was the
8 number that we were working off when we had our first series of
9 hearings, but then that number came down.

10 MR. TOP: That's right. So we're, as part of our
11 prioritization, we may not review all 213,000 loans, I suspect
12 we will not. I mean there's a part of those, some of those
13 loans are being paid off, no reason to review those, and some
14 are going to be below a certain threshold that we're just going
15 to decide probably it's not worth our while. So the number
16 ultimately will be less than 213,000 --

17 THE COURT: Okay.

18 MR. TOP: -- in terms of total loans. In terms of
19 gathering loans and documents and things like that, we're about
20 92 percent of the entire steer of loan files out there.

21 THE COURT: Of obtaining the files.

22 MR. TOP: We have a couple of really one big servicer
23 that's outstanding that we've been working with closely in
24 order to get those loans. Some of the loans were tied up in
25 the Rescap bankruptcy, but we've been able to, we've actually

1 received a significant number of those loans, we're in the
2 process of reviewing them for completeness. And they have
3 pledged to us to try to get us the remaining loans sometime
4 this month and they've so far been true to their word. We
5 ended up getting the colonial loans after serving a subpoena.
6 We have a couple of straggling loans from a couple other
7 servicers but by and large, you know, if you asked me in
8 December whether I think we'd get 92 percent of the loan files
9 as of this date, I would have told you absolutely not.

10 THE COURT: Oh, you did tell me absolutely not.

11 (Laughter)

12 MR. TOP: Yes, I'm sure I did. So you know I think
13 we're all very, very pleased that we've been able to obtain
14 those loans and keep up with the milestones that are set forth
15 in the protocol.

16 As it relates to, you know, some of the instances
17 that Mr. Cosenza raised, I mean obviously, you know, we've
18 submitted 26,000 loans, I don't have those loan files here to
19 respond to them one way or the other. We received their
20 responses to our initial claims on the 50,000 on August 31st,
21 you know, we worked with them on the protocol when our
22 responses would be due on those and they're not due until 670
23 days after they've given our response, so we're still in the
24 process of reviewing all of those loans and I suspect that as
25 he said there probably are some that when you look a little bit

1 closer we may decide not to end up pursuing that claim.

2 THE COURT: Would it be possible though because of
3 the volume that you're pushing through and 60 days times that
4 volume per day is a lot, would it be possible to at some high
5 level look at a few specimens which may be outliers or may
6 represent systemic problems? For example, submitting, and
7 maybe your legal position is different, but Mr. Cosenza made
8 the point that a W-2 dated two years after origination isn't
9 probative of whether or not there was a misrepresentation at
10 origination. So seemingly straightforward things like that or
11 you know a typo in I don't know what it would be, the zip code
12 of a property or something like that, that would be also not
13 material that you could agree and agree to communicate to the
14 team that you know these don't make it over the wall.

15 I'm just trying to, you know, this is extremely
16 expensive, it's extremely time consuming and I'm very gratified
17 that you're moving along as quickly as you are because you
18 didn't think you'd be able to, but you have. But nonetheless,
19 to the extent that we can tweak it, and make it even better, it
20 seems to me in everybody's economic interest to make it better.
21 So is there a way to maybe address for example some of the
22 issues you know on an across the board basis so that the teams
23 cannot continue to make those errors?

24 MR. TOP: So let me address it by saying this, that
25 we did not go out to our review teams and say come up with any

1 claim that you can find. Right. We were very measured in
2 coming up with a list of those types of breaches a) that we
3 thought were material that they ought to be looking for.

4 THE COURT: Right.

5 MR. TOP: And, b) we have not told them be as
6 aggressive as you can, for example, in looking for income
7 things, to say oh yeah, you know, because you didn't make a
8 certain amount four years down the line --

9 THE COURT: But I'm coming at it from the other
10 direction. If you were to, and again your legal position might
11 be different, if it is, then it is what it is. But if you were
12 to categorically say that a W-2 dated two years after
13 origination isn't sufficient so that, you know, just clear
14 direction like that, you know, would help, or the -- I'm just
15 using the ones that Mr. Cosenza indicated.

16 MR. TOP: But to be clear, they've also rejected
17 loans that we've given them a tax return from that same year.
18 So, look, we're going to have some conversations about the
19 evidence that we've presented and the evidence that they view
20 as sufficient or not sufficient to support a claim. We're
21 going to have that additional -- so we're going to --

22 THE COURT: Right. So that might be, I mean, that
23 might be that the borrower represented that they had \$80,000 in
24 income and it shows that they had \$76,000 in income and --

25 MR. TOP: Well it's usually not that. We would,

1 probably not assert that one.

2 THE COURT: Okay. Well --

3 MR. TOP: But let me assure you this. Again, I don't
4 have all these loan files in front of me so I don't know
5 whether those have been asserted or not. It's not that these
6 loans come from the review firms and go immediately to the
7 debtor, we also have a quality control program as well. And so
8 someone else actually looks at the entire file and from the
9 review decided that that was something that was a material
10 breach before we even pass it on to the debtor. So it does
11 have a quality control check and sometimes those quality
12 control checks knock out loans that the review firms otherwise
13 would have presented. So we are likewise doing that as well.
14 And so at this point in time, you know, we've submitted 26,000
15 claims I believe as of August 31st that they have reviewed,
16 they have accepted 705. Of the 705, we're going to send them a
17 letter saying basically we agree with them on the purchase
18 price on 701, but about \$155,000,0000 worth of loans. Right
19 now, under the protocol, we have a disagreement with the
20 debtors as to when that should be paid. We'll have to sit down
21 and talk to them a little bit about that under the protocol.
22 We also have a difference of opinion on -- so under the terms
23 of the protocol as we read it, they're supposed to be filing
24 these acceptances or rejections with the Court. We have a
25 difference of opinion on that particular issue, we're going to

1 sit down and talk to the debtors about those type of things.
2 And obviously as we go through their responses to our claims,
3 we're reviewing each and every one of them. We're going to
4 have to rebut them or agree with them. And after that point in
5 time, we're going to sit down with them and obviously try to
6 negotiate amount. And I think one of our thoughts is you know
7 maybe we'll send some earlier ones so we can start talking
8 about exactly what you're talking about. Let's float a couple
9 of trial balloons out there and see where we can agree and
10 where we don't agree on things, and we may have a disagreement
11 on the law, we may have a disagreement now that facts are
12 sufficient to prove something, but we're going to have to have
13 those conversations with them. So that's kind of where we are
14 in terms of protocol.

15 THE COURT: I mean I can't recall in detail but it
16 seems to me that it would be useful to be in a position to make
17 some categorical determinations that would inform the rest of
18 the process, shorten the time and save everybody you know money
19 and expense.

20 MR. TOP: Absolutely, and that's what we're
21 anticipating doing.

22 THE COURT: So let me go back to the reserve.

23 MR. TOP: Okay.

24 THE COURT: And again, I can't recall exactly what
25 the trustee's projected hit rate was, if you will, but given

1 that I think you know the number of total files is somewhere
2 perhaps out to 200,000, you're approaching the 50 percent mark,
3 you're not putting over 50 percent. I guess what I'm beating
4 around the bush the point is that at some point if it seems
5 appropriate to revisit the amount of the reserve that would be
6 something that would be good to do because it's a big number
7 and I know you say that you've already put back 9 billion in
8 claims. So in your mind that \$5 billion number still sound
9 good. But as the process continues and there's an occasion to
10 re-look at that number, folks are waiting to get paid. I'll
11 just leave it at that.

12 MR. TOP: And I appreciate that, Your Honor, and
13 obviously that's a discussion we intend to have with the
14 debtors as well. Maybe going in the other direction, to be
15 honest with you, but look, we've been pretty good about trying
16 to work out our differences on this and things like that.

17 THE COURT: The ship pretty much sailed on the other
18 direction.

19 MR. TOP: We are, that's a discussion we'll have with
20 them along with many other discussion including details on each
21 particular claim and you know that's the way you know we're in
22 this together, we're going to have to work things out.

23 THE COURT: All right. Well, it sounds like for the
24 most part that is indeed working.

25 MR. TOP: So far so good. Thank you, Your Honor.

1 THE COURT: All right. Thank you. Anyone else want
2 to add anything on behalf of the trustees? Mr. Cosenza,
3 anything more from you?

4 MR. COSENZA: One last point, Your Honor.

5 THE COURT: Did you check with Mr. Cantor first? No?

6 MR. COSENZA: Just one last point, Your Honor. We're
7 very mindful of the reserve and there may be a point over the
8 next couple of months before the next distribution where based
9 on the date [indiscernible] step three and step four and as the
10 other files come in where there may be a time to make an
11 application to the preserve.

12 THE COURT: All right. Don't misunderstand. I'm not
13 looking for disputes, I'm looking for resolutions.

14 MR. COSENZA: Yes. I think people, as you know
15 people have been waiting for their money for quite some time,
16 this is an opportunity we believe in good faith after going
17 through that that number should be lower we'll come to you.
18 Thank you, Your Honor.

19 THE COURT: All right. So I think we're scheduled to
20 next be together some time in December.

21 MR. COSENZA: Yes.

22 THE COURT: Okay. Obviously if there's any need for
23 the Court's assistance before then, we'd be happy to help out.

24 All right. Good to see you, thank you for coming in today.

25 (Proceedings concluded at 10:37 AM)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

DESCRIPTION

PAGE

HEARING re #47569: Status Conference regarding the RMBS
Protocol

CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o=Veritext,
ou,email=digital@veritext.com, c=US
Date: 2015.09.18 14:10:23 -04'00'

AAERT Certified Electronic Transcriber CET**00650

Theresa Pullan

Veritext

330 Old Country Road

Suite 300

Mineola, NY 11501